

FORM FOR USE IN APPLICATIONS
FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254

RECEIVED

2007 FEB 26 A 11:09

PHILLIP GAY

Name

#109431

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Prison Number

St. Clair Correctional Facility, 1000 St. Clair Road
Springville, Alabama 35146-5582

Place of Confinement

United States District Court Middle District of Alabama

Case No. 1:07-CV-104-WHA

(To be supplied by Clerk of U. S. District Court)

Phillip Gay

, PETITIONER
(Full Name) (Include name under which you were convicted)

RALPH Hooks, Warden

, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person
having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF Alabama

, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgement which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN
STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8½ x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8½ x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies * must be mailed to the Clerk of the United States District Court whose address is:

P.O. Box 711
Montgomery, Alabama 36101

- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

***If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.**

PETITION

1. Name and location of court which entered the judgment of conviction under attack Circuit Court of Coffee County, Enterprise, Alabama
2. Date of judgment of conviction March 1, 1988
3. Length of sentence Life without Parole Sentencing Judge (Information Unavailable)

4. Nature of offense or offenses for which you were convicted: Robbery in the First Degree.
5. What was your plea? (check one)
 (a) Not guilty ☒
 (b) Guilty ☐
 (c) Nolo contendere ☐
 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: Not Applicable - (N/A)
6. Kind of trial: (Check one)
 (a) Jury ☒
 (b) Judge only ☐
7. Did you testify at the trial? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
 (a) Name of court: Alabama Court of Criminal Appeals
 (b) Result: Conviction Affirmed.
 (c) Date of result: _____
 If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: (N/A)
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐
11. If your answer to 10 was "yes", give the following information:
 (a) (1) Name of court: Circuit Court of Coffee County, Alabama
 (2) Nature of proceeding: Motion for Reconsideration of Sentence, §13A-5-9-1 of Ala. Crim. Code (Acts 2001).
 (3) Grounds raised: The defendant satisfies the criteria for relief from sentence of life without parole where the defendant does not have a prior Class A felony conviction and is a Non-violent offender.
- (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒
 (5) Result: Motion Denied.
 (6) Date of result: March-2005

(b) As to any second petition, application or motion give the same information:

(1) Name of court Circuit Court of Coffee County, Alabama

(2) Nature of proceeding Rule 60(b) Motion, Ala. Rules Civ. Proc.

(3) Grounds raised The Court abused its discretion and committed plain error in denying the original §13A-5-9.1 motion for reconsideration, on March-2005. The denial of the §13A-5-9.1 motion violated the defendant's rights as guaranteed under the Fourteenth Amendment's Due Process and Equal Protection Clauses.

The prior convictions, relied upon by the Court to enhance sentence, are Constitutionally defective and null and void under statutory law.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (✓)

(5) Result Motion Denied.

(6) Date of result July 10, 2006

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()

(5) Result _____

(6) Date of result _____

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes (✓) No ()

(2) Second petition, etc. Yes (✓) No ()

(3) Third petition, etc. Yes () No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: (N/A)

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- A. Ground one: The Circuit Court's denial of the §13A-5-9.1 motion violates Due Process and Equal Protection of Law.

Supporting FACTS (tell your story briefly without citing cases or law):

The defendant qualifies for relief under §13A-5-9.1 where the defendant does not have a prior Class A felony conviction and is a Non-violent offender. The Alabama Legislature, in enacting §13A-5-9.1 of Ala. Crim. Code (Acts 2001), did not determine any offense to be prohibited from obtaining relief pursuant to §13A-5-9.1 supra. The plain and clear language of the "Act" affords relief to all persons convicted and sentenced under §13A-5-9(c)(3), (Acts 1980).

The Court's denial of relief, based solely on the fact that "the Defendant was convicted for First Degree Robbery (§13A-6-41, supra)" is arbitrary to the intent of the legislature in enacting §13A-5-9.1, supra. There is nothing in the state court records which shows that "there was actual-serious physical injury or death" to a victim during commission of the instant offense, or during commission of a prior offense. The Court's conclusion, that the Defendant is a violent offender, is unsupported by the record.

- B. Ground two: The prior convictions, relied upon in enhancing sentence, are unconstitutional on their face, null and void, and invalid for use.

Supporting FACTS (tell your story briefly without citing cases or law):

The records of the Criminal Proceedings shows that 1) the defendant, at time of entry of guilty plea(s) resulting in the prior convictions, was never advised of the minimum-maximum sentence for each specific offense charged, and 2) A judge, sitting without a jury, determined the issue of guilt and fixed the punishment for the offense of Robbery arbitrary to established law. See: SINGLETON v. State, 288 Ala. 519 (1971); Zimmerman v. State, 49 Ala. App. 442, 444 (1973); Hicks v. Oklahoma, 447 U.S. 343 (1980).

The convictions are invalid on their face, null and void and due to be declared unconstitutional.

- C. Ground three: _____

Supporting FACTS (tell your story briefly without citing cases or law):

D. Ground four: _____

Supporting FACTS (tell your story briefly without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them: (N/A)

14. Do you have any petition or appeal now pending in any court, wither state or federal, as to the judgment under attack? Yes () No (X)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (a) At preliminary hearing Information Unavailable

- (b) At arraignment and plea Information Unavailable - (I/A)

- (c) At trial Same as Above - (I/A)

- (d) At sentencing Same as Above - (I/A)

- (e) On appeal Same as Above - (I/A)

- (f) In any post-conviction proceeding (N/A)
- (g) On appeal from any adverse ruling in a post-conviction proceeding: (N/A)

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes () No (☒)

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes () No (☒)

(a) If so, give name and location of court which imposed sentence to be served in the future: (N/A)

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes () No ()

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

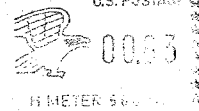
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on February 16, 2007
(date)

Signature of Petitioner

Philip Gay #107431
(J-16-2A)
1000 St. Clair Road
Springville, AL 35146-5582

The correspondence is forwarded
from the Alabama State Prison. The contents
have not been evaluated, and the Alabama
Department of Corrections is not responsible
for the substance or content of the enclosed
communication.



CLERK, UNITED STATES DISTRICT
FEDERAL COURTHOUSE [New Petition]
P.O. Box 711
Montgomery, AL 36101-0711

FOR LEGAL PURPOSES ONLY 1-0711-11 B007

